UNITED
NATIONS

AT

Administrative Tribunal

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LIMITED

AT/DEC/737
21 November 1995

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 737

Case No. 807: MUSEIBES

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, Vice-President, presiding; Mr. Hubert Thierry; Mr. Francis Spain;

Whereas, on 28 August 1994, Hasan Mohd Museibes, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, hereinafter referred to as UNRWA, filed an application requesting the Tribunal, inter alia:

"[To order]

(b) The rescission of:

(1) The severe warning, which the Administration and its JAB cunningly referred to as a reprimand without setting out the reasons and facts and 'documenting the circumstances that have led to such recommendation' in line with the Personnel Directive No A/10(4.4); (...)

...

(c) And finally reinstatement in my former post of Area Welfare Officer or an equivalent post.

...

(f) [Payment of] 1,000, one thousand US dollars in compensation for the six additional teaching periods a week, 288 a year, effective 12 September 1992 until 2 October 1993, the total of 300 periods. (...)

...

(h) [Payment of] 20,000, twenty thousand US dollars in compensation for the moral and psychosomatic harm and perpetual injustice and prejudice."

Whereas the Respondent filed his answer on 31 July 1995;

Whereas the Applicant filed an additional document on 2 September 1995;

Whereas the Applicant submitted additional observations on 10 and 15 October 1995;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA on 2 May 1987, as an Area Welfare Officer in the Aleppo/Latakia Area of Syria, at grade 7, step 1, on a temporary indefinite appointment. On 1 August 1990, the Applicant was transferred to the post of Area Welfare Officer, Central Homs Area. On 4 May 1991, he was transferred to the post of Clerk B, in the Relief and Social Services Department in the Field Office, Damascus, with protected grade and salary. On 1 February 1992, the Applicant was transferred back to the Aleppo Area as an Elementary Teacher, at grade 7. The Applicant resigned, with effect from 1 October 1993.

In a memorandum dated 3 October 1992, the Area Officer, Aleppo/Latakia, reported to the Field Education Officer, Syrian Arab Republic (SAR) that he had visited the Miroon School on 27 September 1992, and that "while checking classroom and teachers' preparation books, I noted that [the Applicant] was the only teacher who did not prepare his lessons." On 5 October 1992, in a memorandum entitled "Severe Warning", the Officer-in-Charge, Education Department, SAR, informed the Applicant that it had been "noticed" that he did not

prepare his lessons and that he hoped that "you will make up for this failure as soon as possible in the future," as "otherwise in case of remaining careless I will regretfully take other measures which will not be in your favour."

In a letter dated 17 October 1992, to the Director of UNRWA Affairs, SAR, and in a further letter, dated 2 November 1992, the Applicant registered a protest against this memorandum entitled "Severe Warning" and requested "that the severe disciplinary measure be rescinded." In a reply dated 21 November 1992, the Director of UNRWA Affairs, SAR, informed the Applicant that he was not prepared to withdraw the memorandum of 5 October 1992.

On 22 November 1992, the Applicant lodged an appeal with the Joint Appeals Board (JAB). On 12 July 1994, the JAB adopted its report. Its evaluation, judgement and recommendation read as follows:

"III. EVALUATION AND JUDGEMENT

19. ...

(a) By reference to the Appellant's personal file, the Board noted that the Administration's decision to serve the Appellant with the severe warning on 5 October 1992 was due to the fact that the Appellant failed to prepare his lessons, a fact not denied by the Appellant.

...

(c) By reference to standing regulations and rules, particularly Personnel Directive A/10, the Board noted that the letter of severe warning with which the Appellant had been served falls within the definition of reprimands as set out in paragraph 5 of Part 1 of the said Personnel Directive ...

...

(e) ... the Board could not establish ... that the administrative decision which is the subject of this appeal has been vitiated by bias or prejudice against the Appellant.

IV. RECOMMENDATION

20. In view of the foregoing, and based on the documents cited before it, the Board unanimously recommends to uphold the Administration's decision to serve the Appellant with a reprimand, wrongly referred to as a letter of severe warning; and that the case be dismissed.

However, the Board feels strongly that when a measure such as this is taken, it should be referred to in a correct manner, to avoid any possible misunderstanding which could result in injustice to a staff member, therefore, the Board couples its foregoing recommendation with a further recommendation that an explanatory note be placed on the Appellant's file, leaving no doubt that the document referred to as a letter of severe warning is in fact an administrative reprimand intended for corrective purposes and not a disciplinary measure."

On 2 August 1994, the Officer-in-Charge, Headquarters, transmitted a copy of the JAB report to the Applicant and advised him as follows:

"You will note that the Board found that it could not be established that the administrative decision which is the subject of your appeal was vitiated by bias or prejudice against you. The Board unanimously made its recommendation to uphold the Administration's decision to serve you with a reprimand, which in the Board's view was wrongly referred to as a letter of severe warning, and that your appeal be dismissed. The Board made a further recommendation that an explanatory note be placed on your file, leaving no doubt that the document referred to as a letter of severe warning is in fact an administrative reprimand, intended for corrective purposes and not a disciplinary measure.

I accept the primary recommendation of the Board, and therefore your appeal stands dismissed. As to the Board's second recommendation, I accept that also, and will issue the necessary instruction for implementation."

On 28 August 1994, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The severe warning given to the Applicant by the Respondent was deceitfully referred to as a reprimand, but is in fact a disciplinary measure.

2. The Applicant was subjected to bias and prejudice and was singled out for punishment as none of the other teachers were preparing their lessons.

Whereas the Respondent's principal contentions are:

1. The Respondent's memorandum was a reprimand, an administrative action taken in the proper exercise of his discretion.

2. The evidence shows that the Applicant was the only teacher in his school who was not preparing lessons.

The Tribunal, having deliberated from 3 to 21 November 1995, now pronounces the following judgement:

I. The Tribunal considers that the material before it is more than sufficient for a decision and, therefore, rejects the pleas for more documents requested by the Applicant. It notes that the personnel files of the Applicant have now been made available to him.

II. In its Judgement No. 717, the Tribunal dealt specifically with the Applicant's claim that he was not properly informed of the reason for several transfers; that he was not given an opportunity to rebut the findings and reports on his work, and finally, that the ex-gratia payment of 25,000 Syrian pounds eventually made to the

Applicant by the Respondent was totally inadequate. In that Judgement, the Tribunal awarded US$2,500 to the Applicant, in view of its conclusion that if the Respondent had "looked at the substance of the case more carefully at an early stage, much of the complication that followed could have been avoided and the Applicant would have been spared some difficulties and uncertainty."

III. In the present case, the Applicant reverts, in fact, to his allegation that he has been a victim of systematic machinations and malicious designs of the Respondent, who was chiefly guided by what the Applicant considers a prejudiced report by the Officer-in-Charge (OIC), Education Department, SAR, on his work. He also asserts that several other persons in UNRWA, SAR, were engaged in wrong-doing, although he adduces neither reasons nor facts supporting his allegations, which in any case, cannot be the subject matter for the Tribunal in this case. It is for the Administration to decide whether anyone is guilty of wrong-doing of the type the Applicant alleges, and if so, whether action is called for.

IV. Apart from the issues referred to above, the principal complaint of the Applicant in this case concerns a formal memorandum that was sent to him on 5 October 1992, by the OIC, Education Department, SAR. This memorandum gives as its subject "Severe Warning". After referring to the Applicant's lapse as a teacher in not "preparing your lessons", it contains the sentence: "Therefore I would like to draw your attention severely to the need of fulfilling this task, otherwise in case of remaining careless I will regretfully take other measures which will not be in your favour." The Applicant considered this memorandum to be totally unfair and based on a prejudiced assessment. He further contends that since a "severe warning" constituted a disciplinary measure under the Rules, he was entitled to be informed of the alleged charges against him and proceedings should have been instituted in strict accordance

with the Rules. Finally, he repeats his allegation that the OIC, Education Department, SAR, and his colleagues were working against him in a prejudiced and malicious manner.

V. The Respondent's reply to these accusations points out that the Applicant's work, conduct and performance had been unsatisfactory throughout his career and that the letter from the OIC, Education Department, SAR, was meant as a corrective measure. It was intended to alert the Applicant that if his work did not improve, he would face unpleasant consequences. The Tribunal notes that, on many occasions in the Applicant's career with UNRWA, the Respondent had drawn the Applicant's attention to the need for better work and conduct. The Respondent states that the Applicant has produced no evidence of prejudice, malice or machinations against him.

VI. The JAB carefully examined these contentions advanced by the parties as well as "all documents cited before it" and recommended that the Applicant's appeal be dismissed. The JAB went on to say that mistakes, such as the reference to the communication as a "severe warning", should be avoided as they might result in injustice to a staff member based on misunderstanding. The JAB further recommended that "an explanatory note be placed on the [Applicant's] file, leaving no doubt that the document referred to as a letter of severe warning is in fact an administrative reprimand intended for corrective purposes and not a disciplinary measure". The Respondent accepted both the recommendations of the JAB.

VII. Taking into account all the circumstances of the case, the Tribunal finds that the Applicant has not suffered any significant injury or damage because of the mistake committed by the Respondent in wording the title of the memorandum of 5 October 1992, and that the subsequent action taken by the Respondent was adequate to

correct his mistake. The Tribunal also finds that the purpose of the Respondent in sending the memorandum of 5 October 1992 was to correct such deficiencies as he found in the Applicant's performance and was not meant as a disciplinary measure.

VIII. In the light of the foregoing, the Tribunal rejects the application in its entirety.

(Signatures)

Samar SEN
Vice-President, presiding

Hubert THIERRY
Member

Francis SPAIN
Member

New York, 21 November 1995

Ms. Maria VICIEN-MILBURN
Executive Secretary